

STEPHEN F. BELLEM

IBLA 80-449

Decided May 27, 1980

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting desert land entry application I-16180.

Remanded.

1. Desert Land Entry: Generally -- Desert Land Entry: Applications

An application for a desert land entry is not properly executed under 43 CFR 2521.2 where the applicant fails to correctly describe the land applied for. Subject to valid intervening rights and competing interests, an applicant may acquire priority from the date (of the filing of the statement of reasons) on which the correct land description is filed with the BLM State Office.

APPEARANCES: Stephen F. Bellem, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is from a decision dated February 27, 1980, by the Idaho State Office, Bureau of Land Management (BLM), rejecting desert land entry application I-16180, because appellant did not correctly identify the land applied for.

The application was filed in response to an order dated September 20, 1979, published at 44 FR 55667 (Sept. 27, 1979), which opened two parcels to desert land application and revoked a previous "initial decision" of September 7, 1978, classifying the two parcels as unsuitable for desert land entry. Parcel "A" was described in the order as constituting the SE 1/4 NE 1/4, SE 1/4 sec. 33, T. 9 S, R. 25 E., Boise meridian, Idaho, and parcel "B" as the S 1/2 SW 1/4, W 1/2 SE 1/4 sec. 34 of the same township. Apparently, appellant

intended to apply for parcel "A". The order also stated that: "All valid applications received between the date of publication of this notice and 10:00 a.m. on October 29, 1979, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing."

On his application filed October 29, 1979, at 10 a.m., appellant described the land as follows: "T. 10 S., R. 24 E." As indicated above, the land appellant intended to apply for was included in a simultaneous opening, but his description was in error on the township and range, and did not include the section. The decision appealed from states that the correct legal description would have been: "SE 1/4 NE 1/4, SE 1/4, sec. 33, T. 9 S, R. 25 E., B.M."

Appellant supplied the correct land description on appeal and argues that his application should not have been rejected because of the honest mistake he made in describing the land in his application.

[1] The applicable regulation, 43 CFR 2521.2(a)(1), requires that an application for desert land entry must be properly executed. Sandy C. Baicy, 46 IBLA 140 (1980). Since appellant failed to correctly describe the land, the application was not properly executed. Cf. Annie Davies, 34 L.D. 539 (1906). Appellant's notice of appeal and statement of reasons was filed with BLM on March 6, 1980. Therein, appellant correctly described the land applied for. Thus, as of March 6, 1980, there was compliance with the regulation and appellant could be considered for the entry, subject, of course, to any valid intervening rights or competing interests in the subject land.

We will therefore remand the case to the State Office with instructions to consider appellant's application as filed as of March 6, 1980, all else being regular, and subject to prior valid filings.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the case file is remanded for further processing, if necessary.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge